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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON: 09.12.2016

ORDER PRONOUNCED ON: 22.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.A. (MD) No.1005 of 2016

and

C.M.P. (MD) .No.6078 of 2016

1. The State of Tamil Nadu,
rep. By its Secretary to Government,
Environment and Forests Department,
Secretariat, Chennai.
2. The Principal Chief Conservator of Forests,
Jeenis Building, Panagal Maligai
Saidapet, Chennai.
3. The Deputy Director,
Project Tiger, Ambasamudram,
Tirunelveli District. ... Appellants/Respondents

Vs.

R.Chellam ... Respondent /Writ Petitioner

Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 08.07.2015 made in W.P. (MD) .No.8015 of 2013.

Prayer in WP(MD) .8015/2013 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of CERTIORARIFIED MANDAMUS to call for the records on the file of the 2nd respondent in connection with the impugned order of recovery passed by him in his proceedings in Se.Mu.Aanai.No.Aa.Aa3/58545/2007 dated 22/04/2013 and quash the same as illegal and arbitrary and consequently direct the respondents to promote the petitioner as Assistant Conservator of Forests for the year 2011-2012 with all service benefits within the time limit that may be stipulated by this Honourable Court.

For Appellants : Mr.N.S.Karthikeyan
Additional Government Pleader

For Respondent : Mr.G.Thalaimutharasu

**JUDGMENT**

[Judgment of the Court was delivered by **J.NISHA BANU, J.**]

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By consent, this Writ Appeal is taken up for final disposal. The appellants herein are the respondents in W.P(MD). No.8015 of 2013 and the respondent is the Writ petitioner in the said Writ Petition. However, for the sake of convenience, the parties are referred to as per the rank mentioned in the Writ Petition.

2. This Writ Appeal has been filed against the order dated 08.07.2015 made in W.P.(MD).No.8015 of 2013, in and by which, the impugned order passed by the second respondent was set aside and if any amount was recovered from the Writ petitioner, the same was directed to be refunded to him within a period of four months from the date of receipt of a copy of the order, failing which, it was directed to be paid with interest at the rate of 12% from the date of order till the date of disbursement. Further, The learned Judge has observed in his order that since the impugned order of recovery had been set aside by this Court, the Writ Petitioner was entitled to all other consequential benefits, but for the punishment order, which shall be extended to him notionally, as he attained the age of superannuation and notional benefits, if any, was also directed to be calculated and paid to him within a period of four months. Aggrieved over the same, the respondents are before this Court.

2. The short facts leading to filing of this Writ Appeal is as follows:-

2.1. Since the facts had been extensively dealt with by the learned Judge, we summarise the same for the purpose of deciding this appeal alone. The parties are referred to as per the order made in the Writ Order.

2.2. The case of the petitioner is that he joined as a Forester in the third respondent office on 02.03.1979 and thereafter, he was promoted as Forest Range Officer on 01.07.1998 and that he has rendered unblemished services. It is his further case that while he was discharging his duties, a show cause notice dated 29.06.2007 was issued under Section 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 (hereinafter referred to as 'the Rules') by the third respondent on the ground that there was shortage of saplings and thereby causing a loss to the Department to the tune of Rs.1,36,148/- and for the same, the petitioner gave his explanation. However, during the interregnum, <https://hdservices.courts.gov.in/hdservices/> show cause notice dated 29.06.2007 was withdrawn by the third respondent on 31.08.2007. After withdrawing the show cause notice issued under Rule 17(a) of the Rules on 31.08.2007, on the



very same day, charge memo for the same set of charges was issued under Rule 17(b) of the Rules and thereafter, the said charge memo was withdrawn on 24.03.2009 on the ground that the charges are indefinite and a fresh charge sheet would be issued to him. According to the petitioner, the show cause notice issued under Rule 17(a) of the Rules on 29.06.2007, which was recalled on 31.08.2007 and on the very same day, another charge sheet was issued under Rule 17(b) of the Rules, which was also subsequently recalled on 24.03.2009 and again on 06.04.2009, the charge sheet came to be issued against the petitioner. However, in all the three charges, the amount alone differs and all the charges were with regard to shortage of saplings and the period shown in all the charges is for the year 2006-2007.

2.3. In the first charge sheet, the shortage was to the tune of Rs.1,36,148/- and in the second charge sheet, it was for a sum of Rs.1,14,000/- and with regard to the third charge, it was for a sum of Rs.1,95,943/-. Departmental enquiry was conducted and after a delay of two years, a report had been submitted holding that the charges had been proved. Since, there was no action on the part of the respondents in passing orders, the petitioner had filed a writ petition before this Court in W.P.(MD) No.6491 of 2013 challenging the charge sheet dated 06.04.2009 and at the time of hearing, pursuant to the petitioner's request, the writ petition was disposed of directing the respondents therein to pass final orders on the charge sheet dated 06.04.2009. However, on 22.04.2013, the impugned order challenged in the Writ Petition had been passed ordering recovery of a sum of Rs.1,95,943/-. According to the petitioner, the enquiry, which has been conducted, was a belated enquiry, for which, he relied on the decision of the Apex Court reported in **2005(5) CTC 380** in **A.Obaidhullah vs. The State of Tamil Nadu and another**.

2.4. Apart from that he submitted that there is a delay in inspection and for that the petitioner cannot be blamed. According to him, the saplings were planted at Kanavur Village and Keezha Chettikulam village in November 2006 and that the inspection ought to have been done before 45 days in terms of Section 142 of the Tamil Nadu Forest Department Code. But, however, the respondents have conducted the inspection nearly after 12 months. He further submitted that in the inspection report of the Deputy Director, dated 21.08.2007, it had been clearly stated that there was possibility of shortage of amount of unwanted crops and while cleaning, there was possibility of being destroyed and that the petitioner's explanation could be accepted and the said report was in favour of the petitioner. He further submitted that fair opportunity was not given to him during the enquiry. But he had not been demanded any further enquiry and <https://hdservices.ecourt.gov.in/hdservices/> report was based on conjectures and surmises. That apart, the order of the 2nd respondent was a non-speaking order.



2.5. Per contra, the third respondent has filed a detailed counter in which he would aver among other things that a duty casted upon the petitioner to take care of the crops, as he was appointed for that purpose. Since the petitioner had not maintained the crops properly, the charges had been framed against him and a detailed enquiry had been conducted and that the petitioner did not raise any objection to the enquiry and that the Enquiry Officer had rendered a fair report. That apart, there was no delay in finalisation of the charges, because the petitioner was not the only person, who had been charge sheeted, and the persons, who were in similar footing like that of the petitioner, had also been charge sheeted along with him. As there was a short fall of saplings in two villages as per the monthly report and on verification about the short fall of saplings, charges had been framed. After admitting the fact that the earlier show cause notices were withdrawn by them, eventually, they contended that the order passed by the second respondent is perfectly in order and the same shall not be interfered with.

3. After hearing both sides, the learned Judge found that when the report of the Enquiry Officer was in favour of the petitioner and relying upon Section 142 of the Tamil Nadu Forest Department Code, 1984 and the seven objections raised by the petitioner, has not been taken into account by the respondents quashed the charge memo. Further, he found that the impugned order was a non-speaking order and the respondents have not conducted the inspection within 45 days as per Section 142 of the Tamil Nadu Forest Department Code, 1984 and that the inspection had been done, after a delay of 12 months and hence, there was every possibility of shortage of saplings, which could not be foisted against the petitioner and by stating so, the learned Judge allowed the writ petition. Aggrieved over the same, the respondents are before this Court.

4. Learned Counsel appearing for the respondents would submit that despite adducing overwhelming evidence to show that the respondent is guilty as per the show cause notices issued to him, the Writ Petition came to be allowed by the learned Judge, without taking into grave charges levelled against the Writ petitioner and prays for interference.

5. Learned Counsel for the Writ petitioner would submit that after perusing the entire materials placed before the court, the learned Judge passed an order in favour of him, which need not be interfered with by this Court.

6. Considered the submissions made on either side and service of notices done material available on record.



7. The specific contentions raised by the petitioner is that a charge memo has been initially initiated under Section 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 which was withdrawn on 29.06.2007 without any reservation to issue a fresh charge memo and the second charge memo was issued to the Writ petitioner and that was also withdrawn on 31.08.2007 stating that no specific charge was made out and only on that ground, it was withdrawn and subsequently, another charge memo has been issued and even after the enquiry completed, no final orders were passed and the petitioner was driven to the Court to complete the disciplinary proceedings within a time frame. In our considered opinion, an employer, cannot proceed against an erring employee twice over upon the same charges, when the first charge memo/enquiry was dropped/withdrawn, without assigning any reasons or by assigning reasons which were neither relevant nor adequate nor appropriate although ostensibly liberty to initiate fresh disciplinary action was reserved. The above proposition has been laid down in a case reported in **2003-II-LLJ 74, Senior Superintendent of Post Offices, Bangalore South Division and Others and V.B.Ravindranathan** and it is squarely applicable to the present case on hand, where, for the same set of charges three charge memos have been issued one under Section 17-A of the Rules, which was withdrawn without any reason and the second one was also withdrawn stating that the charges were vague and the third charge memo has been issued against which the enquiry was conducted. One cannot be put into mental agony by issuing the charge memo after charge memo and prolong the disciplinary proceedings without any rhyme or reason. The said act is violation of the fundamental right guaranteed under Article 21 of the Constitution of India.

8. Further, on going through the provisions of Section 142 of the Tamil Nadu Forest Department Code, 1984, it is clearly mentioned that the inspection has to be done within 45 days from the date of planting the saplings, which is usefully extracted below:-

"142.(1) The principles stated in Article 176, Madras Financial Code, Volume I, should be borne in mind when works are check-measured. No bill should ordinarily be passed for payment without the entries in the measurement book having been check-measured by the Ranger. In any exceptional cases in which check-measurement is not carried out, the reasons should be concisely and clearly noted in the "remarks" column by the Range Officer.

(2) In addition to check-measurement by the Rangers, it is an important duty of Divisional Forest Officers during their inspections frequently to check measure works which are in progress and to initial the measurement book in token of their check. The



District Forest Officers and the Conservators should check measure atleast 25 per cent and 10 per cent respectively of the works done by the Range Officers. On the completion report for the work, the Divisional Forest Officer should certify as to the check carried out by him personally.

(3) The fact of check measurement by a Ranger or the Divisional Forest Officer should invariably be noted in the measurement book at the time of check - measurement and the items check-measured should be indicated by the initials of the checking officer, which shall be placed on the left side of the column "particulars" in line with item check-measured.

(4) The entry measured in my presence by a Ranger or Divisional Forest Officer cannot be accepted as check - measurement.

(5) Conservators should make it a special point to see that these rules are duly observed.

Note - The categories of works which require immediate check-measurement after completion of the work and before payment be check-measured by the concerned officers before effecting payments. In regard to other categories, check-measurements should be completed within 30-48 days of payment."

As per the afore-said provision, as already pointed out earlier, it is clear that the inspection has to be done within 45 days from the date of plantation of trees and only then, the amounts are disbursed, thereafter the officials concerned make entries in the measurement book. Here, admittedly, the bills are settled only after inspections and the officials concerned without adhering to the procedure as contemplated under Section 142 of the Tamil Nadu Forest Department Code, 1984, and after huge delay the inspection had been done, which, in our considered opinion cannot be accepted and in this regard, the findings of the learned Judge at paragraph No.12 is in tact.

9. Further, while the Writ Petitioner had raised seven objections and on going through the impugned order, none of the objections were considered by the respondents, while passing the impugned order, which is clearly pointed out by the learned Judge at paragraph No.11 of his order and therefore, the findings of the learned Judge, that the issuance of the third charge memo for the same set of charges without assigning any reason coupled with the prolonged proceedings and non-application of mind, is well founded and it need not be interfered with by this Court. Thus, the charge memos issued to the Writ petitioner and withdrawn by the respondents and the prolonged delay in concluding the proceedings, can be clearly seen in the impugned order and therefore, we are of view that the Writ Appeal lacks merits and it deserves for dismissal.



10. This Writ Appeal is dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar(RTI)

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Sub Assistant Registrar

To

- 1.The Secretary to Government,
The State of Tamil Nadu,
Environment and Forests Department,
Secretariat, Chennai.
- 2.The Principal Chief Conservator of Forests,
Jeenis Building, Panagal Maligai
Saidapet, Chennai.
- 3.The Deputy Director,
Project Tiger, Ambasamudram,
Tirunelveli District.

+1cc to M/s.G.Thalaimutharasu, Advocate, in SR No.80464.

+1cc to Special Government Pleader in SR.No.83606.

W.A(MD) .No.1005 of 2016
22.12.2016

ssm

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